

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Civil No. 1:07-CV-184-MR-DLH

BORGWARNER INC., and
BORGWARNER TURBO SYSTEMS
INC.,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL,
INC.,

Defendant.

**JOINT PROPOSED
VERDICT FORM**

Per the Court's Order from the Pre-Trial Conference, attached as Appendix A, please find the parties' proposals for the jury verdict form.

The parties have reached agreement with respect to the liability verdict form. The parties have not been able to resolve their disputes with respect to the damages instructions. Accordingly, the parties' respective proposals are set forth as redline to the Court's model.

Dated: May 9, 2011

BORGWARNER, INC. AND
BORGWARNER TURBO SYSTEMS, INC.

By: s/ Leeron G. Kalay

Larry S. McDevitt
11 North Market Street
Asheville, NC 28801
Telephone: (828) 258-2991
Facsimile: (828) 255-0255
OF COUNSEL:
FISH & RICHARDSON P.C.

David M. Barkan
500 Arguello Street, Suite 500
Redwood City, CA 94063
Telephone: (650) 839-5070
Facsimile: (650) 839-5071

Joshua A. Griswold
1717 Main Street, Suite 5000
Dallas, TX 75201
Telephone: (214) 747-5070
Facsimile: (214) 747-2091

Ralph A. Phillips
1425 K Street, N.W., Suite 1100
Washington, DC 20005
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

Attorneys for Plaintiffs
BORGWARNER INC. AND
BORGWARNER TURBO
SYSTEMS, INC.

Attorneys for Plaintiffs
BORGWARNER INC. AND
BORGWARNER TURBO SYSTEMS
INC.

DATED: May 2, 2011

HONEYWELL INTERNATIONAL, INC.

s/ Marc H. Cohen

Attorneys for Defendant

Robert G. Krupka, P.C. (admitted *pro hac vice*)

Marc H. Cohen (admitted *pro hac vice*)

Gregg F. LoCascio (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

333 South Hope Street

Los Angeles, California 90071

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

bob.krupka@kirkland.com

marc.cohen@kirkland.com

gregg.locascio@kirkland.com

Attorneys for Defendant

Forrest A. Ferrell (N.C. State Bar # 1439)

SIGMON, CLARK, MACKIE, HUTTON,

HANVEY & FERRELL, P.A.

420-B Third Ave. NW

Hickory, NC 28601

Telephone: (828) 328-2596

Facsimile: (828) 328-6876

Forrest.Ferrell@SigmonClark.com

Appendix A

CIVIL CASE NO. 1:07cv184

Defendant.

[illegible]

VERDICT SHEET

U.S. PATENT NO. 6,663,347

Question 1.

Has BorgWarner shown by a preponderance of the evidence that Honeywell infringed the following claims of the '347 patent with any of the groups of products listed below?

[A finding of YES is a verdict for BorgWarner.

A finding of NO is a verdict for Honeywell.]

Honeywell Group 1 Products [¹]

- Claim 1:	YES _____	NO _____
- Claim 3:	YES _____	NO _____
- Claim 7:	YES _____	NO _____

Honeywell Group 2 Products [²]

- Claim 1:	YES _____	NO _____
- Claim 3:	YES _____	NO _____
- Claim 7:	YES _____	NO _____

Honeywell Group 3 Products [³]

- Claim 1:	YES _____	NO _____
- Claim 3:	YES _____	NO _____
- Claim 7:	YES _____	NO _____

Honeywell Group 4 Products [⁴]

- Claim 1:	YES _____	NO _____
- Claim 3:	YES _____	NO _____
- Claim 7:	YES _____	NO _____

If you answered "yes" for any of the products and claims in Question 1, proceed to Question 2.

¹ Group 1 products are the following cast titanium compressor wheels and turbocharger systems containing these cast titanium compressor wheels: Honeywell Part Nos. 735640-0001, 735647-0001, 735656-0001, 735665-0001, 760290-0001, 760319-0001, 765091-0001, and 766677-0001

² Group 2 products are the following cast titanium compressor wheels and turbocharger systems containing these cast titanium compressor wheels: Honeywell Part No. 751284-0001.

³ Group 3 products are the following cast titanium compressor wheels and turbocharger systems containing these cast titanium compressor wheels: Honeywell Part Nos. 765094-0001 and 767279-0001.

⁴ Group 4 products are the following cast titanium compressor wheels and turbocharger systems containing these cast titanium compressor wheels: Honeywell Part Nos. 754921-0001 and 755383-0001.

If you answered "no" for all of the products and claims in Question 2, skip Question 2 and proceed to Question 3.

Question 2.

Has BorgWarner shown by clear and convincing evidence that Honeywell's infringement of the asserted claims of the '347 patent was willful?

*[A finding of YES is a verdict for BorgWarner.
A finding of NO is a verdict for Honeywell.]*

YES _____

NO _____

Proceed to Question 3.

Question 3.

Has Honeywell shown by clear and convincing evidence that the following claims of the '347 patent are invalid?

*[A finding of YES is a verdict for Honeywell.
A finding of NO is a verdict for BorgWarner.]*

- Claim 1:	YES _____	NO _____
- Claim 3:	YES _____	NO _____
- Claim 7:	YES _____	NO _____

Proceed to Question 4.

U.S. PATENT NO. 6,629,556

Question 4.

Has BorgWarner shown by a preponderance of the evidence that Honeywell infringed the following claims of the '556 patent with methods of manufacturing the groups of products listed below or with the following groups of products made by the claimed methods?

*[A finding of YES is a verdict for BorgWarner.
A finding of NO is a verdict for Honeywell.]*

Honeywell Group 1 Products

- Claim 2: YES _____ NO _____
- Claim 7: YES _____ NO _____

Honeywell Group 2 Products

- Claim 2: YES _____ NO _____
- Claim 7: YES _____ NO _____

Honeywell Group 3 Products

- Claim 2: YES _____ NO _____
- Claim 7: YES _____ NO _____

Honeywell Group 4 Products

- Claim 2: YES _____ NO _____
- Claim 7: YES _____ NO _____

If you answered "yes" for any of the products and claims in Question 4, proceed to Question 5.

If you answered "no" for all of the products and claims in Question 4, skip Question 5 and proceed to Question 6.

Question 5.

Has BorgWarner shown by clear and convincing evidence that Honeywell's infringement of the asserted claims of the '556 patent was willful?

*[A finding of YES is a verdict for BorgWarner.
A finding of NO is a verdict for Honeywell.]*

YES _____

NO _____

Proceed to Question 6.

Question 6.

Has Honeywell shown by clear and convincing evidence that the following claims of the '556 patent are invalid?

*[A finding of YES is a verdict for Honeywell.
A finding of NO is a verdict for BorgWarner.]*

- **Claim 2:** **YES _____ NO _____**
- **Claim 7:** **YES _____ NO _____**

Proceed to Question 7.

U.S. PATENT NO. 6,904,949

Question 7.

Has BorgWarner shown by a preponderance of the evidence that Honeywell infringed the following claims of the '949 patent with methods of manufacturing the groups of products listed below or with the following groups of products made by the claimed methods?

*[A finding of YES is a verdict for BorgWarner.
A finding of NO is a verdict for Honeywell.]*

Honeywell Group 1 Products
- **Claim 4:** **YES _____ NO _____**

- Claim 7: YES _____ NO _____
- Claim 10: YES _____ NO _____

Honeywell Group 2 Products

- Claim 4: YES _____ NO _____
- Claim 7: YES _____ NO _____
- Claim 10: YES _____ NO _____

Honeywell Group 3 Products

- Claim 4: YES _____ NO _____
- Claim 7: YES _____ NO _____
- Claim 10: YES _____ NO _____

Honeywell Group 4 Products

- Claim 4: YES _____ NO _____
- Claim 7: YES _____ NO _____
- Claim 10: YES _____ NO _____

If you answered "yes" for any of the products and claims in Question 7, proceed to Question 8.

If you answered "no" for all of the products and claims in Question 7, skip Question 8 and proceed to Question 9.

Question 8.

Has BorgWarner shown by clear and convincing evidence that Honeywell's infringement of the asserted claims of the '949 patent was willful?

*[A finding of YES is a verdict for BorgWarner.
A finding of NO is a verdict for Honeywell.]*

YES _____

NO _____

Proceed to Question 9.

Question 9.

Has Honeywell shown by clear and convincing evidence that the following claims of the '949 patent are invalid?

[A finding of YES is a verdict for Honeywell.

A finding of NO is a verdict for BorgWarner.]

- Claim 4:	YES _____	NO _____
- Claim 7:	YES _____	NO _____
- Claim 10:	YES _____	NO _____

You have now completed your deliberations. Have your foreperson sign the Verdict Sheet and return it to the Court.

THIS the _____ day of _____, 2011.

FOREPERSON

CIVIL CASE NO. 1:07cv184

Defendant.

[illegible]

DAMAGES VERDICT SHEET

[[Borg Warner Proposal]]

- A. What amount of lost profits, if any, has BorgWarner shown it more likely than not suffered as a result of sales that it would with reasonable probability have made but for Honeywell's infringement?

\$ _____

- B. For those infringing sales for which BorgWarner has not proved its entitlement to lost profits, what amount, ~~if any~~, has it proved it is entitled to as a reasonable royalty?

\$ _____

[[Honeywell Proposal]]

- ~~A. What amount of lost profits, if any, has BorgWarner shown it more likely than not suffered as a result of sales that it would with reasonable probability have made but for Honeywell's infringement?~~

~~\$ _____~~

- ~~B. For those infringing sale for which BorgWaner has not proved its entitlement to lost profits, what amount, if any, has it proved it is entitled to as a reasonable royalty?~~

~~\$ _____~~

Question 1.

Has BorgWarner shown by a preponderance of the evidence that, but for Honeywell's infringement, BorgWarner would have made the sales that Honeywell made?

YES

NO

If you answered "yes" to Question 1, proceed to Questions 2 and 3.

If you answered "no" to Question 1, skip Questions 2, 3 and 4 and proceed to Question 5.

Question 2.

What is the total amount of lost profits to which BorgWarner is entitled?

\$ _____

Question 3.

Has BorgWarner shown by a preponderance of the evidence that it is entitled to lost profits for convoyed sales of unpatented products?

Yes _____ No _____

If you answered "yes" to Question 3, proceed to Question 4.

If you answered "no" to Question 3, do not complete any other questions and proceed to the signature block.

Question 4.

Out of the total amount in Question 2, how much of that amount is due to convoyed sales?

\$ _____

Do not complete any other questions and proceed to the signature block.

Question 5.

For sales for which BorgWaner has not proved its entitlement to lost profits:

(a) What is the royalty base?

Patented Cast Titanium Compressor Wheel

Other

(b)What is the per unit royalty dollar amount or royalty percentage rate?

\$

(c)What is the total reasonable royalty to which BorgWarner is entitled?

\$

You have now completed your deliberations. Have your foreperson sign the Verdict Sheet and return it to the Court.

THIS the _____ day of _____, 2011.

FOREPERSON